

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHARON N. DAILEY,

Plaintiff,

v.

SOLANO COUNTY SHERIFF, et al.,

Defendants.

No. 2:23-cv-00788-TLN-CKD

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff is a former county inmate proceeding without counsel in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

**I. Procedural History**

On February 28, 2024, this court issued Findings and Recommendations to dismiss this action without prejudice based on plaintiff's failure to file an amended complaint within the time provided. ECF No. 12. After being granted an extension of time to file objections, ECF No. 14, plaintiff filed a first amended complaint. ECF No. 15.

Before the court could screen the amended complaint, plaintiff filed a second amended complaint on August 26, 2024. ECF No. 17. Because the second amended complaint replaces the amended complaint as a matter of law, it is now the operative pleading before the court that is subject to screening pursuant to 28 U.S.C. § 1915A(a). See Loux v. Rhay, 375 F.2d 55, 57 (9th

1 Cir. 1967) (citations omitted) (explaining that once an amended complaint is filed the original one  
2 is “treated thereafter as non-existent.”).

## 3 II. Screening Requirement

4 The court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
6 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
7 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

## 9 III. Second Amended Complaint

10 Plaintiff alleges that while a pretrial detainee at the Solano County Jail she was denied  
11 proper medical care for various conditions which caused her permanent injuries. Named as  
12 defendants are Wellpath, LLC, Dr. Dinesh Nagar, Lieutenant Andrew Hagen, Lieutenant  
13 Katherine Raymos, Sergeant Jeff Poblete, and, the Solano County Sheriff. The second amended  
14 complaint raises a Fourteenth Amendment due process claim based on deliberate indifference to  
15 plaintiff’s serious medical needs, a Monell<sup>1</sup> municipal liability claim, and state law negligence,  
16 failure to summon medical care, and Bane Act claims against defendants.

## 17 IV. Analysis

18 Examination of the amended complaint and review of court records reveal that plaintiff’s  
19 amended complaint contains allegations that are identical to, and therefore duplicative of, claims  
20 raised in Dailey v. Ellis, No. 2:23-cv-00786-TLN-CSK (E.D. Cal.).<sup>2</sup> “A complaint ‘that merely  
21 repeats pending or previously litigated claims’” is subject to dismissal under 28 U.S.C. § 1915(e).  
22 Cato v. United States, 70 F.3d 1103, 1105 (9th Cir. 1995) (quoting Bailey v. Johnson, 846 F.2d  
23 1019, 1021 (5th Cir. 1988)). “[A] duplicative action arising from the same series of events and  
24 alleging many of the same facts as an earlier suit” may be dismissed as frivolous or malicious

25  
26 <sup>1</sup> See Monell v. Dep’t of Social Services, 436 U.S. 585 at 691, 694 (1978).

27 <sup>2</sup> The court hereby takes judicial notice of the docket in Dailey v. Ellis, No. 2:23-cv-00786-TLN-  
28 CSK (E.D. Cal.). See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986) (finding  
that a court may take judicial notice of court records); United States v. Wilson, 631 F.2d 118, 119  
(9th Cir. 1980).

1 under section 1915(e). See Bailey, 846 F.2d at 1021. Plaintiff was granted leave to file a second  
2 amended complaint on July 8, 2024 in Dailey v. Ellis, No. 2:23-cv-00786-TLN-CSK. Instead of  
3 filing the second amended complaint in that case, plaintiff filed it in the present action.<sup>3</sup> Having  
4 reviewed the facts and allegations alleged in Dailey v. Ellis, this court finds that this earlier filed  
5 civil action involves the same allegations against the same defendants at the Solano County Jail.  
6 Based on this analysis, the undersigned recommends dismissing plaintiff's second amended  
7 complaint as duplicative of Dailey v. Ellis, No. 2:23-cv-00786-TLN-CSK. It is further  
8 recommended that the second amended complaint be dismissed without leave to amend.

9 **V. Plain Language Summary for Party Proceeding Without a Lawyer**

10 The following information is meant to explain this order in plain English and is not  
11 intended as legal advice.

12 The court has reviewed the allegations in your second amended complaint and determined  
13 that they are the exact same claims filed in an earlier case that is currently pending in this same  
14 court. The law does not allow the same claims to be raised in multiple lawsuits. Since this action  
15 was filed later in time, it is recommended that it be dismissed.

16 If you do not agree with this recommendation, you can explain why it is not correct.  
17 Label your explanation as "Objections to Magistrate Judge's Findings and Recommendations."  
18 The district judge assigned to your case will review the file and make the final decision.

19 In accordance with the above, IT IS HEREBY ORDERED that the Findings and  
20 Recommendations issued on February 28, 2024 (ECF No. 12) are vacated.

21 IT IS FURTHER RECOMMENDED that:

- 22 1. Plaintiff's second amended complaint be dismissed as duplicative and that leave to  
23 amend the complaint be denied.
- 24 2. The Clerk of Court be directed to close this action.

25 These findings and recommendations are submitted to the United States District Judge  
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27 <sup>3</sup> A review of the docket in Dailey v. Ellis, No. 2:23-cv-00786-TLN-CSK, indicates that the same  
28 second amended complaint was attached to plaintiff's objections filed on September 19, 2024 and  
is pending the court's review.

1 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
2 after being served with these findings and recommendations, any party may file written  
3 objections with the court and serve a copy on all parties. Such a document should be captioned  
4 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
5 objections shall be served and filed within fourteen days after service of the objections. The  
6 parties are advised that failure to file objections within the specified time may waive the right to  
7 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

8 Dated: October 8, 2024



CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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